

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN VANFOSSAN,

No. 1:20-cv-00173-DAD-EPG (PC)

Plaintiff,

v.

ESTELA ALCANTAR, et al.,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN PART

Defendants.

(Doc. No. 18)

Plaintiff Benjamin VanFossan is a prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 1, 2020, the assigned magistrate judge issued findings and recommendations, recommending that “[t]his case proceed on Plaintiff’s claims against Defendants John Amaya, R. Alkire, Cruz, A. Gonzales, Jr., Richard Huerta, Theresa Lewandowski and M. Robles for violating Plaintiff’s right to due process” and that “[a]ll other claims and defendants in Plaintiff’s First Amended Complaint be dismissed, with prejudice.” (Doc. No. 18 at 20.)

The findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within twenty-one (21) days from the date of service. (*Id.*)

Plaintiff filed objections on October 23, 2020. Most notably, plaintiff objects to the dismissal of defendant DeLos Santos because plaintiff “did not change any of the facts stated in

1 the Complaint or lessen the degree of the complaint against [him].” (Doc. No. 19 at 3.) In the
2 original screening order, the magistrate judge had found defendant’s claim against defendant
3 DeLos Santos to be cognizable. (Doc. No. 12 at 2.) It appears that plaintiff’s allegations
4 regarding DeLos Santos in his amended complaint are identical to those alleged as to that
5 defendant in his original complaint. The court therefore concludes that this was a mere oversight
6 in the pending findings and recommendations and that plaintiff’s claim against DeLos Santos
7 should be allowed to proceed.

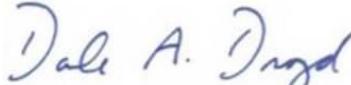
8 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this court has conducted a
9 *de novo* review of the case. Having carefully reviewed the entire file, the court finds the findings
10 and recommendations to be supported by the record and by proper analysis except with respect to
11 defendant Arnel DeLos Santos. This case should also proceed on plaintiff’s claims against
12 defendant DeLos Santos for the alleged violation of plaintiff’s right to due process.

13 Accordingly:

- 14 1. The findings and recommendations issued on October 1, 2020 (Doc. No. 18) are
15 adopted in part and rejected in part;
- 16 2. This action now proceeds only on plaintiff’s due process claims against defendants
17 John Amaya, R. Alkire, Cruz, A. Gonzales, Jr., Richard Huerta, Theresa
18 Lewandowski, Arnel DeLos Santos, and M. Robles;
- 19 3. All other claims and defendants in the first amended complaint are dismissed; and
- 20 4. This case is referred back to the assigned magistrate judge for further proceedings.

21 IT IS SO ORDERED.

22 Dated: November 19, 2020


23 UNITED STATES DISTRICT JUDGE

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